

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA SOULLIERE and ROGER
SOULLIERE,

UNPUBLISHED
October 30, 2001

Plaintiffs-Appellants,

v

No. 224375
Wayne Circuit Court
LC No. 98-818081-NH

ST. JOSEPH'S MERCY OF MACOMB, d/b/a
MERCY MT. CLEMENS CORPORATION,

Defendant-Appellee,

and

PROFESSIONAL X-RAY CENTER, P.C.,
GROSSE POINTE PHYSICIAN'S X-RAY
CENTER, P.C., DANIEL L. ROUSSEAU, M.D.,
and ST. JOHN HOSPITAL & MEDICAL
CENTER,

Defendants.

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting the motion for summary disposition filed by defendant St. Joseph's Mercy of Macomb, d/b/a Mercy Mt. Clemens Corporation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1977, Pamela Soulliere, then known as Pamela Schultz, was a radiology student in defendant's program. She was admitted to defendant's facility for treatment of Hodgkin's Disease, and was advised that she should undergo radiation treatment. Pamela Soulliere received radiation treatment from defendant Daniel L. Rousseau, M.D., with whom she was familiar, at a facility separate and apart from defendant's facility.

In 1998, plaintiffs filed suit alleging that in 1997 Pamela Soulliere underwent treatment for several severe physical ailments, and learned for the first time that she may have been over-radiated in 1977. Plaintiffs alleged that defendant was vicariously liable under an ostensible agency theory. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10),

arguing that it did nothing to lead Pamela Soulliere to reasonably believe that it provided the care alleged to have been negligent. The trial court agreed with defendant's assertion and granted the motion. Subsequently, all remaining defendants were dismissed without prejudice.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). Generally, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely used the hospital's facilities to render treatment. However, if the patient looked to the hospital for treatment, and there was a representation by the hospital that the treatment would be afforded by a physician in its employ, ostensible agency can be found. *Grewe v Mt Clemens General Hosp*, 404 Mich 240, 250-252; 273 NW2d 429 (1978). A showing that the patient looked to the hospital for treatment is not sufficient. To establish the existence of an ostensible agency, it must be shown that: (1) the person dealing with the agent did so with a reasonable belief in the agent's authority; (2) the belief must be generated by some act or omission on the part of the principal sought to be held liable; and (3) the person relying on the agent's authority must not be guilty of negligence. *Chapa v St Mary's Hosp*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. It was undisputed that Pamela Soulliere looked to defendant to provide her with treatment for her Hodgkin's Disease. The physicians who treated her in defendant's facility referred her to an x-ray center, where Dr. Rousseau would perform radiation treatment. Dr. Rousseau performed that treatment at a facility separate and apart from defendant's facility. Pamela Soulliere acknowledged that no signage or documentation indicated that the x-ray facility was affiliated with defendant, and that no one told her that any such affiliation existed. She admitted that she simply assumed that such an affiliation existed because she was referred for treatment by defendant.

No evidence showed that defendant, as the putative principal, did anything that created in Pamela Soulliere's mind the reasonable belief that her radiation treatment would be provided by its employees. Similarly, no evidence showed that defendant was aware of Pamela Soulliere's erroneous assumption and failed to take steps to correct it. See *id.*; see also *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986). The trial court correctly granted summary disposition on the ground that plaintiffs failed to demonstrate a genuine issue of material fact that Pamela Soulliere's belief in defendant's ostensible agency was reasonable and generated by some act or omission on defendant's part. *Chapa, supra*.

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra